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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,460	05/06/2004	Yefim Zhuk		3459

7590 07/26/2006  
Yefim Zhuk  
11191 E. Ida Pl.  
Englewood, CO 80111

EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2168

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/709,460	<b>Applicant(s)</b> ZHUK, YEFIM	
	<b>Examiner</b> Cheyne D. Ly	<b>Art Unit</b> 2168	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### **DETAILED ACTION**

1. Claims 1-16 are examined on the merits.

### **OBJECTIONS**

2. The abstract of the disclosure is objected to because said abstract is greater than 150 words. Applicant is required to submit a new abstract on a **separate sheet of paper**. See MPEP § 608.01(b).
3. The specification [0001] recites the U.S. Provisional Patent Application No. 60/532,384 with the filing date of December 29, 2003, which is inconsistent with the filing date the Office has for said Provisional application. It is noted the Office has the filing date of December 26, 2003 for the U.S. Provisional Patent Application No. 60/532,384. Applicant is required to amend the specification accordingly.
4. In paragraphs, [0013], [0035], [0056], [0099], the Patent Application No. 2010044827 has been recited. The Application No. has been interpreted as a typographical error. The correct Application number is 20010044827. Further, Applicant is required to update the status of said Application because said Application has been issued as Patent No. US 7032006 B2.

### **CLAIM REJECTIONS - 35 U.S.C. § 112, SECOND PARAGRAPH**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-16 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

7. Claims 1-16 are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.
8. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 1, line 1, recites "a software architecture", while, step (g), recites "Methods". Therefore, the metes and bounds of the claim is not clear because said claim is not clear as to whether said claim is directed to "a software architecture" (product) or a method. Claims 2-16 are rejected for being dependent from claim 1.
10. It is noted that the MPEP 2173.06 states that when there is a great deal of confusion and uncertainty as to the proper interpretation of the limitations of a claim, as in the instant claim, it would not be proper to reject such the claims on the basis of prior art. Further, In re Steele, 305 F.2d 859, 134 USPQ 292 (CCPA 1962) states that a rejection under 35 U.S.C. 103 should not be based on considerable speculation about the meaning of terms employed in a claim or assumptions that must be made as to the scope of the claims.
11. Therefore, the great deal of confusion and uncertainty as to what is being claimed precludes a reasonable search for a proper prior art rejection.

#### **CLAIM REJECTIONS - 35 USC § 101**

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory algorithm type subject matter.
14. In regard to embodiment of the "software architecture", the claim has been interpreted as being directed to nonfunctional descriptive material. The software architecture is claimed as descriptive material per se, which is nonstatutory.
15. In regard to the embodiment of "Methods", the claimed method does not produce a physical transformation, or generate any useful, tangible and concrete results.

### **CONCLUSION**

16. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

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17. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-

9199. The USPTO's official fax number is 571-272-8300.

18. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716.

The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tim Vo, can be reached on (571)272-3642.

C. Dune Ly  
Patent Examiner  
7/23/06

